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By ECF and Federal Express

The Honorable James Ware
United States District Court
Northern District of California
280 South 1st Street
San Jose, CA 95113

Re: ***In re Acacia Media Techs. Corp. Patent Litig.*, 05-CV-01114-JW, MDL No. 1665**
***Acacia Media Techs. Corp. v. CSC Holdings, Inc.*, 05-cv-02036-TCP-MLO (E.D.N.Y.)**
***Acacia Media Techs. Corp. v. Time Warner Cable, Inc. et al.*, 05-CV-4148 (LAP) (S.D.N.Y.)**

Dear Judge Ware:

We are writing on behalf of all of the parties to the *Acacia Media Techs. Corp. v. CSC Holdings, Inc.*, 05-cv-02036-TCP-MLO (E.D.N.Y.) and *Acacia Media Techs. Corp. v. Time Warner Cable, Inc., et al.*, 05-cv-4148-LAP (S.D.N.Y.) actions ("the New York actions"). The New York actions are tag-along actions brought by Plaintiff and ordered transferred to this Court for inclusion in the *In re Acacia Media Technologies Corp. Patent Litigation,* 05-CV-01114-JW, MDL No. 1665 ("the MDL") action. The parties to the New York actions seek (1) to clarify the status of the transfer of the above-captioned actions to the MDL action, and (2) to follow up on the joint stipulation of the parties to the New York actions, dated November 18, 2005, that the New York actions be stayed once transferred to the MDL.

First, there appears to have been a clerical oversight that has prevented the effective transfer of the New York actions to the MDL docket. It appears that the October 20, 2005 order of the Judicial Panel on Multidistrict Litigation ("J.P.M.L.") to transfer the New York actions to this Court has not been filed. Therefore, the New York actions have not been added to that docket, and the defendants to the New York actions have not been served with notice by ECF or mail regarding any of the MDL proceedings.

Pursuant to Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, a "transfer or remand pursuant to 28 U.S.C. § 1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district." No such filing is reflected on this Court's docket regarding the MDL. Nor is it reflected in the relevant dockets of the transferor courts. Therefore, the parties respectfully request that the Court direct the clerk's office to file the October 20, 2005 transfer order of the J.P.M.L. in order to effectuate the transfer.

Second, we are writing to follow up on the request of the parties to the New York actions that those actions be stayed. The parties have jointly stipulated and requested that the Court stay the New York actions under the terms set forth in the *Joint Report of the New York MDL Cases Re the MDL Proceedings*, dated November 18, 2005. While no formal opinion has been issued, the parties understand that the Court may not be inclined to grant the parties' request for a stay because the Court is not certain it has such discretion. The parties believe, however, that the Court has the discretion to grant the stipulated stay request pursuant to the applicable case law and the transfer order itself.

Controlling the timing of the MDL by staying some of the actions while proceeding with pretrial motions and discovery in other actions is within the Court's discretion. *See, e.g., In re Pfizer Inc. Secs., Deriv. & "ERISA" Litig.*, 374 F. Supp. 2d 1348, 1350 (J.P.M.L. June 16, 2005) ("[T]he transferee judge . . . remains free to establish separate tracks for discovery and motion practice in any constituent [MDL] action or actions, whenever he concludes that such an approach is appropriate."); *In re Vitamins Antitrust Litig.*, 217 F.R.D. 34, 38 (D.D.C. 2003) ("This MDL consists of many cases, not all of which are on the same schedule."). Indeed, the October 20, 2005 transfer order itself says that "the transferee court remains free to make appropriate decisions regarding any impact that the earlier centralized actions may have on pretrial proceedings in the more recently filed CSC and Time [actions]." A stay in this case would be appropriate because of the advanced stage of the claim construction hearings in the actions that have previously been transferred to the MDL.

The parties understand that the Court intends to address the parties' request for a stay and any other issues relating to the integration of the New York actions into the MDL during the case management conference scheduled for February 24, 2005. The parties to the New York actions will appear on February 24, 2005 and be prepared to discuss these issues.

Respectfully submitted,

Benjamin Hershkowitz /ec

Benjamin Hershkowitz
Counsel for CSC Holdings, Inc.
(and on behalf of all of the parties to the above captioned New York actions)

cc: All counsel of record (by ECF and/or e-mail)
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